IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 9049 of 2004(B)

PETITIONERS:PETITIONERS IN EA.259/03 IN E.P.106/02 IN O.S.88/82.

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1. **C.SARASWATHY AMMA,**
   PADINJATTINKARA PUTHEN VEEDU, PLAKKODU,
   EDAKKIDOM P.O.

2. **C.MALATHI AMMA,**
   PADINJATTINKARA PUTHEN VEEDU, PLAKKODU,
   EDAKKIDOM P.O.

3. **C.BHANUMATHY AMMA,**
   PADINJATTINKARA PUTHEN VEEDU, PLAKKODU,
   EDAKKIDOM P.O.

4. **C.JANARDHANAN PILLAI,**
   PADINJATTINKARA PUTHEN VEEDU, PLAKKODU,
   EDAKKIDOM P.O.

5. **C.RAVEENDRAN PILLAI,**
   PADINJATTINKARA PUTHEN VEEDU, PLAKKODU,
   EDAKKIDOM P.O.

6. **C.BALAKRISHNA PILLAI,**
   PADINJATTINKARA PUTHEN VEEDU, PLAKKODU,
   EDAKKIDOM P.O.

7. **C.AMBILI,**
   PADINJATTINKARA PUTHEN VEEDU, PLAKKODU,
   EDAKKIDOM P.O.

BY ADV. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR
SRI.ASWIN GOPAKUMAR

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RESPONDENTS: COUNTER PETITIONERS IN THE ABOVE E.A. AND THE LAND TRIBUNAL, KOLLAM.

*** 1. SREEDHARAN PILLAI, S/O.RAGHAVAN NAIR
FROM ELIKULATHU THAZHATHIL VEEDU NOW RESIDING AT
SARASWATHY MANDIRAM, VALLAM MURI,EZHUKONE VILLAGE.
(D I E D) – Lrs IMPLEADED:**

**2. CHANDRASEKHARAN NAIR,
PALAMUTTATHU VEEDU, KAKKAKOTTOOR, EZHUKONE.**

**3. OMANAKUTTY AMMA,
PALAMUTTATHU PADINJATTATHIL VEEDU,
KAKKAKOTTOOR, EZHUKONE.**

**4. AYYAPPAN PILLAI,
KARIKKATHU PADINJATTATHIL VEEDU, EDAKKIDOM,
KAREEPRA VILLAGE.**

**5. GOPALAKRISHNAN NAIR,
PALAMUTTATHU VEEDU, KAKKAKOTTOOR, EZHUKONE.**

**6. RETNAMMA,
URUOOR VEEDU, IRUMBAANAGATTU MURI, EZHUKONE.**

**7. ANANDAVALLY AMMA,
SAROJA BHAVAN, VENMANNOOR, NEDUVATHOOR VILLAGE.**

**8. K.K.SAROJA DEVI,
SAROJA BHAVAN, VENMANNOOR, NEDUVATHOOR VILLAGE.**

**9. V.P.SANALKUMAR,
SAROJA BHAVAN, VENMANNOOR, NEDUVATHOOR VILLAGE.**

**10. V.P.SANALKUMAR,
SAROJA BHAVAN, VENMANNOOR, NEDUVATHOOR VILLAGE.**

11. THE LAND TRIBUNAL, KOLLAM.

***ADDL.R12TO R15 ARE IMPLEADED:**

**R12. SARADAMMA, AGED 68 YEARS,
W/O.SREEDHARAN PILLAI, RESIDING ILLIKKULATHU
THAZHATHIL VEEDU (SARASWATHI MANDIRAM)
VALLOM P.O., NEDUVATHOOR, KOTTARAKKARATALUK,
QUILON DISTRICT.**

R13. SARASWATHI AMMA, D/O.SREEDHARAN PILLAI,
AGED 49 YEARS, RESIDING ILLIKKULATHU
THAZHATHIL VEEDU (SARASWATHI MANDIRAM)
VALLOM P.O., NEDUVATHOOR, KOTTARAKKARATALUK,
QUILON DISTRICT.

R14. VIJAYAKUMAR, AGED 46 YEARS,
S/O.SREEDHARAN PILLAI,
RESIDING ILLIKKULATHU
THAZHATHIL VEEDU (SARASWATHI MANDIRAM)
VALLOM P.O., NEDUVATHOOR, KOTTARAKKARATALUK,
QUILON DISTRICT.

15. VIJAYALAKSHMI, AGED 40 YEARS,
D/O.SREEDHARAN PILLAI,
RESIDING ILLIKKULATHU
THAZHATHIL VEEDU (SARASWATHI MANDIRAM)
VALLOM P.O., NEDUVATHOOR, KOTTARAKKARATALUK,
QUILON DISTRICT.

(*ADDL.RESPONDENTS 12 TO 15 ARE IMPLEADED AS PER ORDER
DATED 31/01/2007 IN I.A.42/07)

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.9049/2004 B

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER DTD. 5/02/20094 IN THE COURT OF THE SUB COUR, KOTTARAKKARA IN E.A.NO.59/03 IN E.P.106/02.**

EXT.P2: **COPY OF JUDGMENT IN O.P.NO.4653/1994-D DTD. 6/11/1998 IN THE HIGH COURT OF KERALA.**

EXT.P3; **COPY OF JUDGMENT IN W.A.NO.593 OF 1999 DTD. 27/08/2003 IN THIS COURT.**

EXT.P4; **COPY OF PROCEEDINGS COVERED BY SMP 101/93 DTD. 27/08/93 ISSUED BY 11TH RESPONDENT.**

EXT.P5: **COPY OF ORDER DTD. 4/01/1994 IN I.A.NO.1/94 IN SMP.NO. 10/93 IN THE LAND TRIBUNAL, KOLLAM.**

EXT.P6: **COPY OF PETITION IN E.A.NO.259/2003 IN THE COURT OF SUBORDINATE JUDGE, KOTTARAKKARA, DTD. 14/12/03.**

EXT.P7: **COPY OF OBJECTION IN E.A.NO.259/03 DTD. 12/12/03 IN THE COURT OF THE SUBORDINATE JUDGE, KOTTARAKKARA.**

/ TRUE COPY/

Kss

M.N.KRISHNAN, J.

WP(C)No.9049 OF 2004 B

Dated this the 5th June, 2007.

JUDGMENT

This writ petition is preferred against the order in E.A.259/03 in E.P.106/02. The said application was filed by the obstructors viz., the petitioners to refer the matter to the land tribunal for an adjudication whether they are having tenancy right over the property. The learned Munsiff did not accede to that request and dismissed the application. It is against that decision the present writ petition is filed.

2. Learned counsel for the writ petitioners has drawn my attention to the various documents produced along with the writ petition. The original suit was decreed and except item 1 of the property rest of the properties were delivered. It is item 1 of the decree schedule that is the subject matter of dispute now. One Chellamma's husband was a party to the suit. Subsequently Chellamma claimed right over this item 1 of the property as a lessee under a document of 1956 and the present writ petitioners on the death of Chellamma claims tenancy right over the property as it is heritable and alienable and therefore they want the matter to be referred to the land tribunal for adjudication of the tenancy right. Ext.P2 is a judgment

passed by this Court in O.P.4653/94. It was a case filed by the present decree holders to stay the proceedings before the land tribunal stating that suo motu proceedings initiated in favour of Chellamma is not maintainable. This Court did not stay the matter but directed the writ petitioners therein to move the land tribunal to challenge the question of maintainability of the proceedings therein. Against that decision a writ appeal was filed and as per Ext.P3 judgment a Division Bench of this Court directed the Subordinate Judge's Court, Kottarakara to dispose of the obstruction petition filed in O.S.88/82, at any rate within four months from the date of receipt of the judgment. The said judgment was dated 27.8.2003. Chellamma died during the year 2002. In order to properly evaluate and appreciate the case there cannot be any dispute regarding one factor. The present writ petitioners are claiming right to the property only under Chellamma and Chellamma alone. If Chellamma is having tenancy right they will be also entitled to same right. Now for a reference under Section 125 of the Kerala Land Reforms Act there must arise a dispute with reference to tenancy. In this case, as learned Subordinate Judge has pointed out that as early as on 14.8.1993 the obstruction petition filed by Smt. Chellamma had been dismissed. Learned counsel for the

decree holder submits before me that the said order has become final and no appeal has been preferred and therefore the claim of Chellamma over the property has been negatived by a competent court by dismissing her obstruction application. If it is so a further question of any right to property by Chellamma will not arise and will not lie in the hands of the legal representatives of Chellamma. It is a settled principle that they cannot claim a better right than the original person who claim a tenancy right. When her right had been negatived and it had become conclusive by the non-preferring of an appeal or revision, as the case may be, then the legal representatives, after the death of the said person cannot come before the court and contend for the position otherwise. So, according to me it has to be stated that since it has become conclusive that Chellamma did not have any right over the property by the dismissal of the obstruction petition on 14.9.93 her legal representatives cannot put forth a claim under her claiming tenancy right over the property. Therefore, the question of any right to Chellamma does not arise for adjudication in the claim application. When it is so, question of the legal representatives claiming tenancy right as the legal heirs of Chellamma also does not arise. So, really a question of tenancy does not arise for consideration in the

execution application and therefore, the court below was perfectly justified in dismissing the application for reference. Therefore the writ petition lacks merit and it is dismissed.

3. The executing court is directed to dispose of the matter on other points, after hearing both the parties. In any case, if the writ petitioners are able to establish that the order against Chellamma has not become final they are entitled to produce such documents before the court.

M.N.KRISHNAN
Judge

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